



# United States Department of the Interior

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## Memorandum

To: DM's Bakersfield and CDD

From: State Director

Subject: Interpretation of Fish and Game Management Language in the California Desert Protection Act

Our agency and the California Department of Fish and Game (CDFG), along with numerous volunteer organizations, are very proud of our close and successful partnership to benefit desert wildlife populations. One species of particular concern has been desert bighorn sheep. Public lands are crucial for the continued survival and restoration of bighorn sheep, both agencies have spent a great deal of time and effort to develop needed facilities so bighorn sheep populations can persist. This effort was recognized when the California Desert Protection Act (CDPA) was debated in Congress. A special provision found in section 103(f) of the CDPA provided specific wildlife management direction. It reads:

*"Management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title and shall include the use of motorized vehicles by the appropriate State agencies."*

This provision is unique in wilderness legislation and therefore, has created some confusion among BLM and CDFG managers and staffs. To prevent this confusion, the following document clarifies congressional intent for the section 103(f) provision. Also provided is BLM California policy for implementing this section and a list of mechanisms both BLM and CDFG will pursue to ensure this implementation is successful.

BLM's longstanding goal is to continue to work cooperatively with CDFG to maintain or restore wildlife populations in the Desert to the best of our ability, both within and outside of wilderness areas. BLM clearly recognizes the State's authority, through CDFG, to manage the fish and wildlife populations in California and we take our responsibility in managing wildlife habitats to support these populations very seriously.

Accordingly, BLM managers are instructed to personally be involved in making the decisions necessary to implement this policy in concert with the CDFG managers involved. However, where a maintenance emergency exists putting wildlife populations at risk, BLM managers are directed to establish clear emergency notification procedures with CDFG to allow necessary interim activities to be taken immediately in wilderness areas to protect wildlife.

## **I. Congressional Intent**

It is first, very important to closely review the congressional debate about section 103(f) in order to understand how Congress intends for BLM to implement this provision. The debate about this section took place June 13, 1994, within the House of Representatives. We have attached both a copy of the Congressional Record (attachment A) and a brief overview of the congressional debate which captures some of its main points (attachment B). A video tape of the debate is available upon request.

The exact words found in the perfecting amendment eventually approved by the House reads:

*"As provided in section 4(d)(7) of the Wilderness Act, nothing in this title shall be construed as affecting the jurisdiction of the State of California with respect to fish and wildlife on the public lands located in that State. Management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title and shall include the use of motorized vehicles by the appropriate state agencies."*

This perfecting amendment was later divided into two sections. The first sentence eventually became Section 103(e) of the CDPA and is the standard language used in most wilderness legislation. The second sentence became section 103(f) and is the special provision which is discussed in this memorandum.

In the debate about the intent of this special provision, the key points made by the sponsors who supported this amendment were:

- 1) Language in previous wilderness bills such as the Arizona Wilderness Act would not have provided the California Department Fish and Game (CDFG) sufficient authority for motorized access to water sources for maintenance or restoration.
- 2) They desired a "status quo." They wanted to allow CDFG and their volunteers the same ability for maintaining or restoring existing and vehicular access as was occurring prior to wilderness designation.
- 3) Regarding the language within section 103(f), "Where the management activities to maintain or restore fish and wildlife populations and habitats to support such populations may be carried out within wilderness...", they emphasized the "may" in the statement indicates BLM has control over that part of the section. It is clear that Congress intends for BLM and CDFG to work cooperatively in reaching decisions concerning activities in wilderness areas. It is also clear that Congress did not want to see the Federal Government "veto" these activities and motorized access. The intent is clearly

that the State continue to be able to conduct fish and wildlife management activities, using motorized access, particularly with respect to the maintenance and development of water sources for desert wildlife.

## **II. BLM California Policy for Implementing Section 103(f)**

Based on the key points brought forward through the congressional debate, it is the BLM California policy for implementing section 103(f) of the CDPA that:

- 1) BLM continues to hold the ultimate responsibility for managing any actions occurring within the wilderness areas under their jurisdiction;
- 2) When BLM and CDFG cooperatively determine the need to conduct management actions to restore or maintain desert bighorn sheep or other populations, CDFG and their volunteer organizations will be allowed to continue to use motor vehicles to carry out these necessary activities;
- 3) The language does not address nor otherwise change BLM administrative procedures for new guzzler construction; and
- 4) BLM will always work cooperatively with CDFG as partners in implementing this section of the law.

## **III. Mechanisms for Implementing Congressional Intent of Section 103(f)**

BLM California will use four mechanisms for implementing this Section. These include:

Memorandum of Understanding (MOU) - On 9/24/97 an MOU for implementing the Section 103(f) provision was signed by both BLM California Desert District Manager and the California Department of Fish and Game, Region 5 Manager. This MOU will be used as the framework for cooperation and procedures for CDFG to maintain and manage activities in BLM wilderness where motorized vehicle and equipment use is involved. This is primarily an informational and educational tool to be used by both agencies for vehicle access and for guzzler maintenance and developments.

Training - A series of workshops designed by BLM and CDFG will be conducted in FY 97 and 98. They will be attended by both agency's managers and appropriate staffs as well as volunteer associations. Their objective is to mutually gain a better understanding of their interrelated roles and responsibilities for the management wilderness and wildlife as prescribed under section 103(f).

Annual Bighorn Project Coordination Meetings - The agencies will continue to conduct the annual meetings to assess implementation of the CDPA. A major function of these joint CDFG and BLM annual meetings has been to identify the proposed project schedule associated with bighorn sheep guzzlers, including major maintenance and new guzzler construction. These meetings have been important in providing BLM sufficient lead time to ensure plan conformance and NEPA compliance when required.

It is extremely important we continue to maintain our close and cooperative partnership,

particularly in the restoration of bighorn sheep habitat. As you are aware, we feel that to successfully meet the congressional intent of Section 103(f), we must implement it as partners and work closely to prevent any confusions at the field level.

If there are any questions regarding these policy or the procedures for implementation, feel free to call Paul Brink at 916-978-4641.

*Ed Hartay*

2 Attachments

Attachment A - Congressional Record for Amendment (15 pps.)

Attachment B - A Review of the Congressional Debate (5 pps.)

cc:

John Butz, CDD

Chris Roholt, CDD

John Skibinski, Bakersfield

Jeff Jarvis, WO-240, 204LS